IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE TWENTY THIRD DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE A.GOPAL REDDY
WRIT PETITION NO : 2786 of 1999

Between:
The Gram Panchayat Nallamadu, Unguturu Mandal, W.G.District, Rep. by its Sarpanch.

..... PETITIONER

AND

1. The Government of A.P., rep. by its Secretary, Panchayat Raj and Rural Development (PTS.IV) Department, Secretariat, Hyderabad.
2. The District Collector, W.G.District, Eluru.
3. The Gram Panchayat, Yerramillipadu, Unguturu Mandal, W.G.District, Rep.by its Sarpanch.
4. Chillikuri Pulla Rao, Upa-Sarpanch, Yerramillipadu Gram Panchayat, Unguturu Mandal, W.G.District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Mandamus declaring the action of the first respondent in allocating Nallamadu tank in Nallamadu Gram Panchayat to Yerramillipadu Gram Panchayat as illegal, arbitrary and without jurisdiction and consequently set-aside G.O.Rt.No.182 Panchayat Raj and Rural Development (PTS.IV) Dept., dated 30-01-1999.

Counsel for the Petitioner: MR.B.ADINARAYANA RAO

Counsel for Respondents 1 to 3: G.P. For Panchayat Raj

Counsel for the Respondent No 4: MR.G.KRISHNA MURTHY

The Court made the following Order :

Petitioner-Gram Panchayat assails the correctness of the G.O.Rt.No.182 Panchayat Raj and Rural Development (PTS.IV) Department, dated 30-01-1999, wherein first respondent allocated Nallamadu tank in Nallamadu Gram Panchayat to Yerramillipadu Gram Panchayat.

The controversy involved lies within a narrow compass:

The Collector, West Godavari District, in exercise of powers under Section 3 (2) of the Andhra Pradesh Panchayat Raj Act, 1994 and Rules made there under, read with the Rules in G.O.Ms.No.515 dated 17-08-1994, issued a notification in Roc.No.2271/94/A.6/PTS dated 12-05-1995 declaring Gollagudem, Gopalapuram and Yerramillipadu as villages. After detailed enquiries conducted by the officials of Panchayat Raj, Nallamadu cheruvu in Survey No.411 of Nallamadu revenue village was allotted to the Gram Panchayat, Nallamadu. As the matters stood thus, the petitioner-Gram Panchayat issued a notification dated 29-03-1998 to conduct the auction of fishing rights in the said Nallamadu Tank. On issuance of the said notification, fourth respondent made a representation before the Government, upon which, first respondent, through its memo, dated 04-04-1998, stayed the auction. Thereupon, the petitioner-Gram Panchayat moved first respondent for vacating the order passed by it, which, on being satisfied that there is no justification for continuing the stay, had vacated the stay order passed by it. Subsequently, the petitioner again issued a notification dated 31-07-1998 for auction of the fishing rights. Against the order passed by first respondent, fourth respondent, claiming to be representing third respondent-Gram Panchayat and others, filed W.P.No.21572 of 1998, which was disposed of by this Court dated 01-09-1998, at the stage of admission, directing first respondent to consider the representation made by the petitioner

dated 2-4-1998 and pass appropriate orders in accordance with law within six weeks from the date of receipt of a copy of the said order. It is further directed that pending consideration of the representation, status quo should be maintained. On disposal of the writ petition, first respondent called upon the petitioner-Gram Panchayat to appear for the enquiry on 24-10-998 and after hearing the parties, first respondent issued G.O.Rt.No.182 dated 30-01-1999 directing that the Nallamadu tank in Nallamadu Gram Panchayat be allotted to Yerramillipadu Gram Panchayat and second respondent was directed to take further action in the matter. Hence the writ petition.

The District Panchayat Officer, West Godavari filed counter-affidavit on behalf of respondents 1 and 2 stating that the revision filed by fourth respondent was taken up as per the directions of the High Court in W.P.No.21572 of 1998 dated 01-09-1998 and after calling for the report from the Divisional Panchayat Officer and on hearing both sides, first respondent issued orders allocating Nallamadu tank to third respondent-Yerramillipadu Grampanchayat.

The counter is conspicuously silent about the issuance of the notice dated 13-10-1998 and the revision which was filed after disposal of the writ petition by the Upa Sarpanch and others before the Government. Whereas the files produced by the Government do not disclose service of notice on the Sarpanch of the petitioner Gram Panchayat to appear for the enquiry on the revision subsequently filed by fourth respondent.

Respondents 3 and 4 filed separate counter-affidavit stating that at the time of bifurcation of the Nallamadu Gram Panchayat in 1995, there was an understanding that the tank to an extent of Ac.54.30 cents in R.S.No.411 will be included in third respondent Gram Panchayat, but without considering the understanding and geographical conditions, the same was wrongly included in the petitioner-Gram Panchayat, for which the villagers filed objections. When the petitioner-Gram Panchayat issued notification on 24-07-1998 informing the public that auction will be conducted on 31-07-1998 for lease-hold rights for fishing operation in the said tank of third respondent-Gram Panchayat, third respondent made a representation to the Government to stay the auction. Accordingly, first respondent, after conducting enquiry, stayed the auction. Again the petitioner issued notification dated 24-07-1998 proposing to conduct auction. Aggrieved by the same, third respondent filed W.P.No.21572 of 1998, which was disposed of directing first respondent to consider the representation of the petitioner dated 2-4-1998. In pursuance of the order passed by this Court and after issuing notice to the parties, the impugned G.O. was passed.

Learned Counsel for the petitioner contends that Gram Panhchayat, represented by its Executive Officer or its Sarpanch can prefer a revision before the Government under Rule 10 of the Andhra Pradesh Gram Panchayat (Declaration of Villages) Rules 1994, within 10 days from the date of publication of notification. But, third respondent-Gram Panchayat has not chosen to challenge the notification within the stipulated time. Further, he contends that the representation made by fourth respondent cannot be treated as a revision and the Government has no power to exercise any revisional jurisdiction under Section 264 of the Andhra Pradesh Panchayat Raj Act. In view of the same, entertaining and allowing the revision, after lapse of a period of three years, is without jurisdiction and in violation of principles of natural justice and is liable to be set aside.

Learned Government Pleader produced the records and contended that after disposal of the writ petition, fourth respondent and others filed a revision questioning the notification, in which notices were issued and after following the procedure, the revision was allowed.

Learned Counsel for respondents 3 and 4 initially contended that, if no notice dated 13-10-1998 is issued on the revision filed by respondent No. 4, matter can be remanded to the Government for passing appropriate orders. But, today he submits that Government issued notice on 3-11-1998 to the parties on the revision filed by fourth respondent and only after issuing such notice, following the procedure, the revision was allowed. In ***M.Narasimha Reddy V Government of A.P.***[1] this Court held that the right to file a revision is available to any of the persons of the Gram panchayat and that it cannot be confined to the Gram Panchayat only. In view of the same, he submits that the revision filed by third respondent and others is maintainable before

Government and there is no illegality in allowing the revision.

As already observed, records produced by the Government do not disclose service of notice in the revision filed by fourth respondent-Gram Panchayat. But, the notice which was issued to the petitioner-Gram Panchayat is only on the representation made by third respondent dated 2-4-1998, which was directed to be disposed of by this Court in W.P.No. 21572 of 1998. On receipt of the order in the above said writ petition, a note was put up on 17-08-1998 to see whether the representation dated 2-4-1998 has been submitted to the Government or not. Curiously, thereafter another notice dated 3-11-1998 was inserted in the file with an endorsement dated 17-11-1998 'please put up' followed by the revision filed by the respondents. But, the said notice issued on 3-11-1998 was not served on the respondents nor there is any acknowledgement to the said effect. In view of the same, the impugned order passed by the Government is in violation of principles of natural justice and the petitioner was not put on notice about the said revision filed by fourth respondent and the impugned order is liable to be set aside.

The writ petition is accordingly allowed by setting aside the impugned order and the matter is remanded to the Government to pass appropriate orders after giving notice to both the parties. Parties are at liberty to raise all the contentions, including the maintainability of the revision, before the Government. No costs.

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23-06-2004

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1. The Government of A.P., rep. by its Secretary, Panchayat Raj and Rural Development (PTS.IV) Department, Secretariat, Hyderabad.
2. The District Collector, W.G.District, Eluru.
3. The Gram Panchayat, Yerramillipadu, Unguturu Mandal, W.G.District, Rep.by its Sarpanch.
4. Two C.Cs. to the Government Pleader for Panchayat Raj, High Court Buildings, Hyderabad (OUT).
5. Two C.D. Copies.

[1] 1997 (3) ALD 636 (D.B.)